In the High Court of Judicature for Rajasthan
Jaipur Bench
**
Cr. Misc. Petition No.1027/2003
Pradeep Kumar Taneja **Versus** State

Date of Order ::: 05/10/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Dinesh Yadav, for petitioner (accused)
Mr. Arun Sharma, Public Prosecutor.

Instant petition has been filed assailing order dt.24/07/03 of Addl. Chief Judl Magistrate, NO.2, Jaipur City framing charge of offence U/s 420, IPC against petitioner in Cr.Case-982/02.

Brief facts giving rise to the controversy raised herein are that petitioner being Environment Consultant is rendering his services for preparation of environment impact assessment (**"EIA"**) and environment Management Plan (**"EMP"**) reports, in the name of M/s Jaishree Technocrate (P) Ltd. Vide letter dt.16/05/96, DLF Cement Ltd (**"DLF"**) hired his services for preparation of EIA & EMP reports. However, to establish Cement unit, since 04/06/93, the DLF was having "No Objection certificate" issued by Rajasthan Pollution Control Board (**"Board"**) initially for one year and subsequently renewed upto January, 1996 or the date of commission of plant whichever is earlier vide letter dt.

08/07/94.

Employees of the Pollution Board brought to the notice of its Chairman through Member Secretary as is evident from letter dt.22/10/96 that letter No.1372 granting extension of consent to establish cement Unit of the DLF is forged one. At this stage, Akshay Bhargava, Sr.Environment Engineer of the Pollution Board lodged a written report dt.25/10/96 at P.S. Gandhinagar Jaipur, on which FIR-483/96 was registered for offences U/Ss 420/467/468/471, IPC, against "unknown person" inter-alia alleging that the Pollution Board has neither received application dt.29/02/96 for issuing extension for grant of "No objection Certificate" nor letter No.1372 of extension issuing "No objection certificate" in favour of DLF Cement Co. at Jaitaran (Pali) is dispatched, which according to him was forged document - on the basis whereof, the DLF has taken benefits from various Government agencies.

However, the police filed challan on 18/09/2001 against petitioner only - after taking note whereof and its accompanying documents, learned Magistrate took cognizance of offence and vide order dt.24/07/2003 decided to frame

charge against petitioner for offence U/s 420, IPC. Hence this petition.

Counsel for petitioner submits that framing of charge is not mechanical exercise but is a judicial application of mind and while framing charge, the Court is required to sift evidence and find out as to whether there is grave suspicion arising out of material on record – on which charge can be framed. Counsel submits that in instant case, learned Magistrate in fact has not sifted evidence on record which has caused grave injustice to petitioner.

Counsel further submits that basic ingredient of 'cheating" as provided U/s 415, IPC is conspicuously missing in instant case and therefore, charge ordered to be framed against petitioner for offence U/s 420, IPC is not legally sustainable. In support, Counsel placed reliance on decision of **Apex Court in Hiralal Harilal Bhagwati Vs. CBI New Delhi (2003(5) SCC 257)** and submits that if petitioner is allowed to be prosecuted for offence U/s 420, IPC in the facts of instant case, it will be a clear abuse of process of law.

Public Prosecutor supporting the order impugned, submits that learned Magistrate has

applied its judicial mind and given reasons while passing order impugned for framing charge against petitioner and whatever submission being made in instant petition can at best be his defence which can be examined only at the stage of trial and not at this stage.

I have considered rival contentions of both the parties, and with their assistance, examined material on record. It is trite that the Court while exercising powers U/s 228/240, CrPC, so as to consider question of framing of charge against an accused, has jurisdiction to sift and weigh the evidence for limited purpose for finding out whether or not a prima facie case against the accused is made out, in case material placed on record discloses grave suspicion. The test to determine a prima facie case depends upon the facts of each case. By and large, if two views are equally possible and the Court is satisfied that evidence produced on record gives rise to some suspicion but not grave suspicion against an accused, it will be within its right to discharge the accused. However, while in exercise of jurisdiction U/s 228/240, CrPC, Court has to consider broad probabilities, total effect of evidence/documents produced on record & any

basic infirmities appearing in the case but it does not mean the Court should make a roving inquiry into pros & cons of matter and weight evidence as if he was conducting the trial.

It is also true that power of quashing a criminal proceeding in exercise of inherent jurisdiction U/s 482 CrPC is restricted and can be exercised very sparingly, with circumspection – that too in the rarest of rare cases only where allegations made in first information report or complaint, itself, even if are taken at their face value and accepted in entirety, do not make out a case against the accused. For determination of such a question, it is relevant to note the nature of offences alleged against the accused and ingredients of offences and averments made in complaint so also in material on record.

In the instant case, offence alleged against petitioner is of cheating as defined in Section 415 and punishable U/s 420, IPC. Scope of Section 415, IPC, defining "Cheating" has been considered by Apex Court in **Hridaya Ranjan Pd. Verma Vs. State of Bihar (2000(4) SCC 168**) ad infra:

> **"14.** On a ready of the section it is manifest that in the definition there are set forth two separate classes of

> acts which the person deceived may be induced to do. In first place, he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person decided would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest."

It is clearly emerges from a reading of S.415, IPC and what has been considered by Apex Court that there cannot be any criminal prosecution for the charge of 'cheating" unless fraudulent or dishonest intention is shown right at the inception of transaction, that is the time when the offence is said to have been committed.

Apex Court further considered in **Hiralal Harilal Bhagwati Vs. CBI New Delhi** (supra) ad infra:

> **"34.** Section 415 of the Indian Penal Code deals with cheating. To hold a person guilty of cheating as defined under Section 415 of the Indian Penal Code, it is necessary to show that he has fraudulent or dishonest intention at the time of making the promise with an intention to retain the

> property. In other words, Section 415 of the Indian Penal Code which defines cheating, requires deception of any person (a) inducing that person to : (i) to deliver any property to any person, or (ii) to consent that any person shall retain any property OR (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person any body's mind, reputation or property."

In the light of microscopic analysis made by Apex Court (supra), while examining question of S.415, IPC, this Court has to consider as to whether ingredients as provided in S.415, IPC are prima facie made out for offence punishable U/s 420 IPC against petitioner.

Petitioner is an environment consultant and his job assigned, as is evident from letter dt.16/05/1996 of the DLF which hired his services was only confined to prepare all reports in regard to environmental clearances of its lime stone mines viz., preparation of comprehensive EIA and EMP; and there is no document which can at all connect him with the job of obtaining consent or NOC from the Pollution Board. Even in

NOC initially granted to the DLF for establishing its cement unit in January, 1993 or in extension granted at a later stage, no evidence has come on record that petitioner was ever involved or instrumental in issuing NOC in favour of DLF at any stage.

In instant case, during investigation, the DLF sent a letter dt.24/04/97 to the Investigating Officer that all functions for obtaining Government approvals in general and particularly as regards RPCB (Pollution Board) were assigned to Shri J.Subramanian {Co.' Sr.Vice President (Projects)} who was responsible person from very beginning for RPCB approvals including extension of NOC/for consent to establish 1.4 mtpa cement unit; and whereby it has been clarified by A.S.Minocha, Managing Director, DLF that he never spoken to Shri P.Taneja (petitioner) in particular regarding preparation of any feasibility report.

In course of investigation, statements were recorded of employees & officers of the Pollution Board U/s 161 CrPC but none has ever stated that petitioner in any way ever approached them for seeking "NOC" on behalf of the DLF. Few employees of the Board also stated that for

"NOC", a sum of Rs.15,000/- has to be deposited for extension which the DLF failed to deposit. Even during investigation, it has come on record that no fee is required to be deposited at the time of initial NOC while establishing their cement plant but at the time when the cement unit starts commissioning, requisite fee is to be deposited.

Be that as it may, in statement recorded of Officers of the DLF, none has stated that the petitioner was ever paid any sum if at all required to be deposited for grant of NOC from the pollution Board whereas the DLF has shown its complete assignment of work to its own officer Shri J.Subramanian (Sr.Vice President) for grant of extension to the NOC in favour of the DLF; but Shri Subramanian in his statement recorded U/s 161 CrPC stated that it was the petitioner who has faxed the alleged FAX purporting to be "NOC" dt.02/09/96 to the DLF. However, apart from statement of Shri Subramanian it has nowhere come on record as to how the petitioner is connected with letter dt. 29/02/96 alleged to have been sent by DLF asking for extension of NOC and alleged extension of NOC No.1372 in question.

There was no incriminating evidence in

regard to statements made by Shri J.Subramanian that petitioner was in any way connected with alleged forged extension of NOC from pollution Board. That apart, there is no prima facie material on record which may at all connect petitioner with alleged documents for commission of offence nor during investigation there was incriminating material brought on record to prima facie show in what manner atleast petitioner can be said to be benefited by producing such alleged forged document in the form of extension of NOC No.1372 in favour of DLF, rather it is the DLF Co., which got itself, benefited by it on the basis whereof by producing in various Government agencies for establishment and getting its cement unit operated. Even from material on records including letter of contract between the petitioner and the DLF, it appears that no job of getting NOC renewed from pollution Board has been assigned by DLF to him. There is no material on record as to what kind of benefit the petitioner has taken out of alleged document of extension of NOC having despatch no.1372 through Government agency.

Amount of Rs.20,000/- said to have been paid by the DLF to petitioner vide bill

dt.9/09/96 – reference whereof has been made in order impugned was only a receipt of amount with regard to preparation of feasibility report for obtaining extension of NOC for 1.4 mta cement plant, which appears to have led for framing charge impugned, as if it were paid of consultancy charged for obtaining NOC in question.

After going through material on record, this Court is of the opinion that basic ingredients of cheating as defined in S.415, IPC, are completely missing; as such in the facts of instant case, no offence U/s 420, IPC as alleged against petitioner are made out and the learned Magistrate committed an error in framing charge U/s 420,IPC, which is liable to be quashed & set aside. In such circumstances, if prosecution is allowed to continue against petitioner, it will be nothing but a clear abuse of process of law and will cause serious prejudice.

Consequently, misc. petition succeeds and is hereby allowed. Order dt.24/07/03 of ACJM No.2, Jaipur City and proceedings in Cr. Case –982/02 initiated against petitioner for offence U/s 420, IPC, are set aside. Record be sent back forthwith to the court below.

(Ajay Rastogi),J.